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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. 1648

WILLIAM PAUL RAGSDALE,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, William Paul Ragsdale, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on January 29, 1971.

OPINION BELOW

The opinion, judgment and errata letter of the United States Court of Appeals for the Fifth Circuit, not yet reported, appears in the Appendix hereto. No opinion was rendered by the District Court for the Middle District of Alabama.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on January 29, 1971. A timely

petition for rehearing and petition for rehearing *en banc* was denied on April 1, 1971 and this petition for certiorari was filed within 30 days from that date. This Court's jurisdiction is invoked under the provisions of 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the Sixth Amendment right to trial by jury in criminal cases is infringed by the giving of an affirmative or preemptory instruction of guilt to the jury hypothecated upon a belief of "the evidence".

2. Whether it is permissible under any state of the evidence to give an affirmative instruction of guilt where specific intent or "willfulness" is an essential element of the crime charged.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Code, Annotated, Title 18:

> §242. Deprivation of rights under color of law
>
> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different

punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

STATEMENT OF THE CASE

Under a five count indictment charging separate substantive violations of 18 U.S.C.A. §242 (1969), Ragsdale, the former Sheriff of Lee County, Alabama, was convicted and sentenced under Count 1. Ragsdale, testifying in his own behalf, stated on direct examination that he administered five or six licks with a strap to the alleged victim in Count 1 of the indictment after the alleged victim had made repeated escapes from confinement and after tendering a choice to the victim of six licks or an escape warrant. The District Judge during final argument of counsel to the defendant made the following statement:

> "THE COURT: Now, I will save you a lot of effort in your argument, I intend to charge the jury if they are convinced beyond a reasonable doubt the evidence in the case is uncontradicted to the fact is he is guilty as charged in that count. I thought I might save you some time on that." (R. Vol. II, p. 739)

In his oral charge to the jury, the District Judge said:

> "And, so, if you are convinced beyond a reasonable doubt that the uncontradictory evidence that you have heard, then he is guilty on Count One." (R. Vol. II, pp. 792-793)

In response to a specific request for supplemental instructions by the jury as to intent under Count One, the Court said:

> "Really, about all I left to your judgment, ladies and gentlemen, in Count One is whether you were convinced beyond a reasonable doubt that the evidence as presented to you is what happened. And if you are convinced beyond a reasonable doubt under the uncontradicted evidence, he would be guilty under Count One." (App., p. 11)

Petitioner duly excepted to the above quoted portions of the Court's charge and an appeal was duly perfected to the United States Court of Appeals for the Fifth Circuit. That Court affirmed on January 29, 1971, and denied a petition for rehearing and petition for rehearing *en banc* on April 1, 1971.

REASON FOR GRANTING THE WRIT

INTRODUCTION

To paraphrase Mr. Justice Jackson when faced with the identical situation here at bar in *Morissette vs. United States,* 342 U.S. 246, 72 S. Ct. 240, 96 L.Ed. 288 (1952), this would have remained a profoundly insignificant case to all except its immediate parties had it not been so tried and submitted to the jury as to raise questions both fundamental and far-reaching in federal criminal law, for which reason certiorari should be granted.

I.

THE DECISION BELOW CONFLICTS DIRECTLY WITH DECISIONS OF THIS COURT, THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND OTHER COURTS OF APPEAL.

Sparf vs. United States, 156 U.S. 51, 15 S. Ct. 273, 39 L.Ed. 343 (1895), long ago delineated the respective functions of judge and jury in the trial of criminal cases under the federal system of jurisprudence and established the rule that guilt or innocence of the crime charged was never to be withdrawn from the jury's consideration.

Murdock vs. United States, 290 U.S. 389, 54 S. Ct. 223, 78 L.Ed. 381 (1933), disposed of cases of the genre of *Horning vs. District of Columbia,* 254 U.S. 135, 41 S. Ct. 53, 65 L.Ed. 185 (1920), by specifically holding that in crimes where "willfulness" is an element of the offense charged, uncontroverted proof of the *actus reus* would not justify a preemptory charge of guilt as "the jury might nevertheless find that it was not prompted by bad faith or evil intent which the statute makes an element of the offence".

Screws vs. United States, 325 U.S. 91, 65 S. Ct. 1031, 89 L.Ed. 1495 (1945), gave constitutional life to the statute at bar on the strength of the inclusion of "willfulness" as a constituent element of the offense and held that in the event "willfulness" is used in the statute "something more is required than the doing of the act prescribed by the statute". "An evil motive to accomplish that which the statute condemns becomes a constituent element of the crime". "And *that issue must be submitted to the jury under appropriate instructions". (Emphasis supplied.)* In determining the existence of "willfulness" the jury "would be entitled to consider all the attendant circumstances – the malice of petitioners, the weapons used in the assault, its character and duration, the provocation, if any, and the like".

The jury below was not allowed to consider any circumstances but was told that the circumstances shown by all the evidence, if believed, established as a matter of law the constituent element of "willfulness" and that their verdict must be "guilty".

Morissette vs. United States, 342 U.S. 246, 72 S. Ct. 240, 96 L.Ed. 288 (1952), stated the principle that where criminal intent is an essential element of the crime charged it should not be decided by the Court as an apparently conclusive presumption of law predicated upon a single act rather than upon all the circumstances: The trial court in *Morissette* refused to allow the defendant to argue to the jury the question of intent and charged the jury to the effect: "That if this young man took this property *(and he says he did),* without any

permission *(he says he did)*, that was on the property of the United States Government *(he says it was)*, that he is guilty of the offense charged here". The court went further to say:

> However clear the proof may be, or however incontrovertible may seem to the judge to be the inference of a criminal intention, the question of intent can never be ruled as a question of law, but must always be submitted to the jury. Jurors may be perverse, the ends of justice may be defeated by unrighteous verdicts; but so long as the functions of the judge and jury are distinct, the one responding to the law, the other to the facts, neither can invade the province of the other without destroying the significance of trial by court and jury.

In the trial below the District Judge apparently decided that "specific intent" or "willfulness" was to be determined by the Court as a conclusive presumption of law from the evidence. The charge to the jury told them that the evidence was uncontradicted and that, if believed, the defendant was guilty. The question of intent was thus effectively removed from consideration by the jury.

The decision below is in irreconcilable conflict with the above decisions of this Court and with decisions of the United States Court of Appeals for the Fifth Circuit and with those of other Courts of Appeal. Interestingly enough, the Fifth Circuit on January 27, 1971, two days before the opinion in this case rendered an opinion in a case where the defendant under viable pleas of "not guilty" and "not guilty by reason of insanity", testified and admitted the *actus reus*. The trial Judge charged the jury that their verdict could only be "guilty" or "not guilty by reason of insanity". This charge was held to be error in removing the question of guilt from the jury. *United States of America vs. Skinner*,437, F.2d 164 (5th Cir.1971). See also, *Moorman vs. United States*, 389 F.2d 27 (5th Cir. 1968), *Mims vs. United States*, 375 F.2d 135 (5th Cir. 1967), *Edwards vs. United States*, 286 F.2d 681 (5th Cir. 1960), *Montford vs. United States*, 271 F.2d 52 (5th Cir. 1959), *Wardlaw vs. United States*, 203 F.2d 884 (5th Cir. 1953), *United States vs. Spock*,

416 F.2d 165 (1st Cir. 1969), *United States vs. Luxenberg*, 374 F.2d 241 (6th Cir. 1967), *United States vs. Farber*, 336 F.2d 586 (6th Cir. 1964), *United States vs Buchanan*, 244 F.2d 916 (6th Cir. 1957), *United States vs. Schwachter*, 237 F.2d 640 (6th Cir. 1956), *United States vs. Raub*, 177 F.2d 312 (7th Cir. 1949), *Leffler vs. United States*, 409 F.2d 44 (8th Cir. 1969), *Dinger vs. United States*, 28 F.2d 548 (8th Cir. 1928), *Drossos vs. United States*, 16 F.2d 833 (8th Cir. 1927), *Stewart vs. United States*, 311 F.2d 109 (9th Cir. 1962), *Bogileno vs. United States*, 38 F.2d 584 (10th Cir. 1930).

II.

THE DECISION BELOW ERASES A BASIC SIXTH AMENDMENT CONSTITUTIONAL RIGHT.

The Constitutional guarantee of a trial by jury in criminal cases has created jurisprudential problems almost from the inception of the Republic. Surely *Sparf vs. United States*, 156 U.S. 51, 15 S. Ct. 273, 39 L.Ed. 343 (1895), is the most exhaustive study of the problem. The province of judge and jury has probably evoked more appellate criminal practice than any other area. *Murdock vs. United States*, 290 U.S. 389, 54 S. Ct. 223, 78 L.Ed. 381 (1933), *Morissette vs. United States*, 342 U.S. 246, 72 S. Ct. 240, 96 L.Ed. 288 (1952) and *Screws vs. United States*, 325 U.S. 91, 65 S. Ct. 1031, 89 L.Ed. 1495 (1945), have, however, established that, at least where specific intent or willfulness is an element of the crime charged, the issue must be left for jury decision. Reasonable men, without indulging in sophisticated semantical exercises, could but conclude that the District Judge removed this decision from the jury below by an affirmative direction of guilt, albeit predicated upon a belief of "the evidence".

CONCLUSION

To protect the fundamental Constitutional right of trial by jury and in the exercise of the power of superintendence over inferior courts by resolving directly conflicting decisions, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,

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April 26, 1971

CERTIFICATE OF SERVICE

I, James M. Fullan, Jr., attorney for William Paul Ragsdale, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26th day of April, 1971, I served three copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on the United States as follows:

1. By mailing in the United States Mail three copies of same in a duly addressed envelope with air mail postage prepaid to the Solicitor General, Department of Justice, Washington, D.C. 20530.

2. By mailing in the United States mail three copies of same in a duly addressed envelope with first class postage prepaid to the Honorable Ira Dement, United States Attorney for the Middle District of Alabama, Post Office Box 197, Montgomery, Alabama 36101.

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 30056
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

WILLIAM PAUL RAGSDALE,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Alabama

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(January 29, 1971)

Before THORNBERRY, MORGAN and CLARK, Circuit Judges.

CLARK, Circuit Judge: William Paul Ragsdale, Sheriff of Lee County, Alabama, was prosecuted in the court below under a five-count indictment charging separate substantive violations of 18 U.S.C.A. § 242 (1969). The first three counts alleged brutality toward male inmates. The fourth and fifth counts

*Rule 18, 5th Cir.; *see* Isbell Enterprises v. Citizens Casualty Co. of New York, 431 F.2d 409, Part I (5th Cir. 1970).

charged sexual misconduct with a female inmate. A trial by jury resulted in a verdict of guilty as to Count 1 and not guilty as to Counts 2 through 5, inclusive.

The uncontradicted evidence relative to Count 1, including the testimony of the defendant himself, disclosed the following facts. Lawrence Williams was an inmate of the Lee County jail under the custody of defendant Ragsdale. For some time Williams had been accorded a "trusty" status which entailed extra duties and extra privileges not allowed to other inmates. On several occasions Williams unlawfully left the jail. The government refers to these instances as escapes. The defendant sheriff classifies them as occasions on which Williams had "run off". Following each of the first few of these departures, Williams received lectures upon his return to the jail; on later recaptures Sheriff Ragsdale withheld certain of Williams' "trusty" privileges. On two such occasions Sheriff Ragsdale disciplined Williams by striking him with a restraining belt. On the particular reapprehension which gave rise to the conviction now on appeal, Sheriff Ragsdale confronted Williams with a choice of procedures: Ragsdale told Williams he would either swear out a warrant against Williams for the offense of escape from custody or would administer summary punishment in the form of six strokes of the restraining belt. Williams agreed to accept the six blows, which Sheriff Ragsdale administered.

This appeal asserts two broad bases for reversal: first, that the trial court's instructions invaded the province of the jury by directing a verdict of guilt; second, that the prosecutor's misconduct, coupled with erroneous rulings on matters of evidence, constituted an accumulation of prejudicial occurrences requiring reversal. Finding neither basis valid, we affirm.

I. THE INSTRUCTIONS

The core of the Sheriff's complaint is that the court's instructions deprived the jury of their proper function of determining whether Sheriff Ragsdale's acts embodied the statutorily required willfulness and intent to deprive his

prisoner of a right, privilege or immunity secured or protected by the Constitution or laws of the United States. In essence he asserts that the jury could have found the choice he left to Williams involved no more than a proper concern for prison discipline among "trustys" and that such a finding would have required the jury to acquit him on Count 1, as it did on the remaining counts.

First, we should take note of the statute involved, Section 242, which provides:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.[1]

Next, we must examine those parts of the court's charge which form the gravamen of the complaint. But before we deal with specifics, we would observe that the sheriff acknowledges that portions of the original charge dealing with willfulness and intent were given in the precise language he requested. He contends error occurred because assertedly inconsistent language was used by the court, particularly when the jury returned after deliverating a little over an hour and a half and requested additional instructions on the element of intent as it applied to Count 1.[2] In pertinent part, this was the court's full response to the jury's request:

---

[1]The indictment did not charge Sheriff Ragsdale acted on account of or by reason of race or color of his prisoner. The statute has been interpreted to be bifurcated so that action with a racial animus is immaterial to wilful deprivation of federally protected rights or privileges. *United States v. Classic*, 313 U.S. 299, 61 S. Ct. 1031, 85 L.Ed.2d 1368 (1941); *Miller v. United States*, 404 F.2d 611 (5th Cir. 1968).

[2]The court's original charge contained numerous references to the issue of intent

required to constitute a violation of §242 under Count 1. For example:

> I have used the words "willful deprivation of Constitutional rights", and I will define that for you. Federal statute forbids anyperson to willfully subject any inhabitant of any State to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States. Before there can be a violation of this Federal statute, the evidence in the case must establish beyond a reasonable doubt that the accused did the prohibited acts willfully as charged. An act is done willfully if done voluntarily and intentionally, and with the specific intent to do something that the law forbids. That is to say, with bad purpose either to disobey or disregard the law.
>
> * * *
>
> On the other hand if the jury should have a reasonable doubt as to whether the accused acted willfully or as to any other essential element of the offense charged as stated in the instructions with reference to any court, the jury should acquit the accused with reference to such count or all counts.
>
> Now I have told you that intent was an essential element. Intent may be proved by circumstantial evidence. Indeed, it can rarely be established by any other means – it is something in the mind.
>
> * * *
>
> As a general rule, it is reasonable to infer that a person ordinarily intends all the natural and probable consequences of acts knowingly done or knowingly omitted.
>
> So unless the evidence in the case leads the jury to a different or contrary conclusion, the jury may draw the inference and find that the accused intended all the natural and probable consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act knowingly omitted by the accused.
>
> * * *
>
> Now with reference to the first Count – I might say this to you, when I make reference to any of the facts in the case, I must caution you that you are the sole judges of the facts. Any comment I have to make with reference to the facts you are free to disregard.
>
> * * *
>
> With reference to Count 1, the evidence is uncontradicted that during the period of time set out in the indictment, at the place set out in the indictment, that this defendant was the duly elected Sheriff of this County, and that he was acting under the law as charged there, and that he did on at least one occasion willfully assault and strike Lawrence Williams. He himself says that he gave him the choice of issuing a warrant or taking six licks. He had no right to do that. And it constituted summary punishment, which he had no right to impose. And it was a deprivation of his rights.
>
> And so, if you are convinced beyond a reasonable doubt from the uncontradicted evidence that you have heard, then he is guilty on Count 1.

THE COURT: Gentlemen....

First, a defendant comes into court under a presumption of innocence....

Next, the Government has the burden of proof of convincing you beyond a reasonable doubt of all the material elements of the thing he is charged with.

Then I further told you that the evidence was uncontradicted that some time during that period of time, at least one offense occurred as alleged.

The initial charge also included the following instructions in the exact language requested by the defendant:

I charge you, members of the jury, that with respect to the crime charged in Count 1 of the indictment, specific intent must be proved by the government before there can be a conviction and you must be satisfied beyond a reasonable doubt that William Paul Ragsdale had the purpose and intent to deprive Lawrence Williams of a constitutional right before you would be authorized to convict William Paul Ragsdale under Count 1 of the indictment.

* * *

I charge you, members of the jury, that an act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

I charge you, members of the jury, that with respect to the offenses charged in this indictment specific intent must be proved before there can be a conviction. A person who knowingly does an act which the law forbids or knowingly fails to do an act which the law requires to be done, intending with bad purpose either to disobey or to disregard the law, may be found to act with specific intent. An act or failure to act is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

I charge you, members of the jury, that in every crime there exist a union or joint operation of act and intent. The burden is always upon the government to prove both act and intent beyond a reasonable doubt.

The charge concluded with this usual and correction admonition:

Consider all my charges together, don't single out just one, but put everything I said together with reference to all of these. The same thing is true with reference to intent – with regard to all counts, including the first count, which has to do with Mr. Williams.

I told you that the evidence was uncontradicted that it occurred where it is alleged to have occurred and that it occurred by the defendant.

I told you that the evidence is uncontradicted that he was the duly elected Sheriff of Lee County, Alabama. The evidence was uncontradicted that he was acting under the color of law of the State of Alabama when he did what the evidence is uncontradicted that he did do.

... I told you that the evidence is uncontradicted that the defendant . . . gave the named person Lawrence Williams, also known as "Lum" Williams, a choice, to sear out a warrant or either administer six licks with this leather strap – that is in evidence.

I told you that the evidence is uncontradicted that (this) constituted summary punishment, he had no right to give him a choice. A man has a right to due process of law, to be charged and have a trial. He had no right to give him the alternative and had no right to inflict by his own testimony the six licks.

... An act done willfully is one which is done voluntarily and intentionally and with the specific intent to do something that the law forbids. That is to say with bad purpose to either disobey or disregard the law.

* * *

As a general rule it is reasonable to infer that a person ordinarily intends all of the natural and probable consequences of his acts knowingly omitted.

Now that does not mean he had to know in a legal way he was depriving a man of his Constitutional rights. It means that he knew what he was doing and he intended to do what he was doing. And if that did constitute a deprivation of his Constitutional rights, and if you are convinced beyond a reasonable doubt, he would be guilty

of the offense charged in Count 1.

Really, about all I left for your judgment, ladies and gentlemen, in Count 1, is whether you were convinced beyond a reasonable doubt that the evidence as presented to you is what happened. And if you are convinced beyond a reasonable doubt, under the uncontradicted evidence he would be guilty under Count 1.

Any other question that you want to ask me?

THE FOREMAN:
That is all, your Honor. Thank you.

The Sheriff duly excepted to this supplemental charge only on the grounds that it pretermitted the question of intent. No exception was taken as to the over-all fairness of the supplemental charge.

Although appellant's thorough brief cites a number of authorities, the thrust of his argument urges us to find the trial court's instructions violate *Screws v. United States*, 325 U.S. 91, 65 S.Ct. 1031, 89 L.Ed. 2d 1495 (1945), which reversed the conviction of a sheriff and two other law enforcement officials who beat a handcuffed prisoner to death, and *Morissette v. United States*, 342 U.S. 246, 72 S. Ct. 240, 96 L.Ed. 2d 288 (1952), which reversed the conviction of a deer hunter, who had been found guilty of converting government property for picking up 84 dollars worth of empty, rusting bomb casings from a remote area which the government used as a bombing practice range.

It is urged that *Screws* mandated the court to give an instruction that the jury had to find more in the defendant's actions than merely a generally bad purpose. The contention is made that the judge should have instructed the jury that a conviction could be returned only if Sheriff Ragsdale acted as he did with the purpose in mind of depriving Prisoner Williams of a constitutional right. This argument has plausibility. The *Screws* majority, in construing the same statute under which

Ragsdale was convicted, stated that the Act required the showing of an intent to deprive a person of a right which had been made specific, either by the express terms of the Constitution or the laws of the United States or by interpreting court decisions. The problem for the defendant here and the thing that distinguishes *Screws* is the uncontradicted evidence, including Ragsdale's own testimony, which establishes the motive, intent and purpose of his summary punishment of this prisoner. In *Screws* evidence had been adduced that the Sheriff held a grudge against the prisoner he beat to death, but the executioners testified that the prisoner had reached for a gun and had resisted his detention. Thus, the proof lacked certitude as to why the reprehensible act took place. The trial court had only charged that if Screws and his accomplices used more force than was necessary to make the arrest of the prisoner, they violated the statute. The Supreme Court reversed because, they held, such an instruction stopped short of being sufficient under a proper interpretation of the statute, which was not intended to make a federal crime of every local act of police brutality. They added however, that Sheriff Screws and his cohorts need not have been thinking in terms of federal constitutional or statutory law and that the only additional instruction needed to make the charge accurate was for the judge to have told the jury:

> To convict it was necessary for them to find that petitioners (Sheriff Screws, et al.) had the purpose to deprive the prisoner of a constitutional right, *e.g.* the right to be tried by a court rather than by ordeal. And in determining whether that requisite bad purpose was present the jury would be entitled to consider all the attendant circumstances – the malice of petitioners, the weapons used in the assault, its character and duration, the provocation, if any, and the like. *Screws, supra,* 325 U.S. at 107.

In the case at bar the Court's instruction does not suffer from the deficiency condemned in *Screws.* It stated to the jury no more than the unvarnished truth disclosed by the record – the uncontradicted proof showed that the reason Sheriff

Ragsdale beat prisoner Williams was his deliberate decision that, if Williams chose to forego his constitutional right of a trial by law for the crime of escape, he, Ragsdale, would take the law into his own hands and act summarily as prosecutor, judge, jury and punisher for such crime. The statement of the Sheriff that he considered his actions a form of prisoner discipline and thus that his thoughts were free of malice was a part of the evidence which the jury heard. The instructions of the judge left them the option to believe or disbelieve what they had heard. However he correctly instructed them that if they accepted as true the evidence which established that the Sheriff strapped Williams for the crime of escape and did so as an alternative to instituting a proceeding against his prisoner for that crime according to the forms of the law, then the intent necessary to constitute a violation of §242 was proven. *Screws* does not condemn such a practice. Noble motives and pure thoughts cannot bar the conviction of one who admits intentional action which violates the proscriptions of a statute declaring that action criminal, and a judge can properly instruct as to what acts the statute condemns, which is the most the instructions did here.[3]

Morissette, supra, involved a charge under 18 U.S.C.A. §641 (1966), a statute which did not expressly require a showing of evil intent. The court held that such an intent was nevertheless an essential element to make the conversion of government property a crime, and further ruled that in Morissette's case no presumption of such evil intent would arise from the facts proven. The deer hunter could reasonably have believed the government had abandoned these old bomb casings. Relying on *Tot v. United States,* 319 U.S. 463, 63 S. Ct. 1241, 87 L.Ed. 1519 (1943), the Court in *Morissette,* held:

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[3]Similar instructions defining the legal effects of actions but leaving credibility of the proof to the jury have been approved in actions under the Anti-Racketeering Act, 18 U.S.C.A. §1951, (1970). *Nick v. United States,* 123 F.2d 660 (8th Cir. 1941), *cert. denied* 314 U.S. 687, 62 S. Ct. 302, 86 L.Ed. 550 (1941); *Hulahan v. United States,* 214 F.2d 441 (8th Cir. 1954), *cert. denied* 348 U.S. 856, 75 S. Ct. 81, 99 L.Ed. 675 (1954); *United States v. Varlack,* 225 F.2d 665 (2nd Cir. 1955); *United States v. Lowe,* 234 F.2d 919 (3rd Cir. 1956), *cert. denied* 352 U.S. 838, 77 S. Ct. 59, 1 L.Ed.2d 56 (1956); and *United States v. Green,* 246 F.2d 155 (7th Cir. 1957).

> A presumption which would permit but not require the jury to assume intent from an isolated fact would prejudge a conclusion which the jury should reach of its own violition. A presumption which would permit the jury to make an assumption which all the evidence considered together does not logically establish would give to a proven fact an artificial and fictional effect. *Morissette, supra,* 342 U.S. at 275.

But, just as was *Screws, Morissette* is distinguishable from Ragadale's case. The court did not incorporate in its instructions any proscribed or unreasonable presumption. The only presumption of any sort in the case *sub judice* which chould have had bearing upon the appellate issue – intent – would have to be found in the instructions which permitted the jury to utilize the rational, well-established inference that a person ordinarily intends the consequences of his knowing acts. No exception was taken to this charge, and indeed none would have been meritorious. The judge left to the jury all that was in their province – was the evidence they heard true. His charge, considered as a whole violated neither the spirit nor the letter of *Morissette.*

Another challenge raised concerning the Court's supplementary instruction was that it was not balanced and only made points favorable to the government. *See Perez v. United States,* 297 F.2d 12 (5th Cir. 1961). The Sheriff raised no objection to the instruction on this ground, so any error we find would have to be plain error within the meaning of Fed. R. Crim. P. 52(b). *See United States v. Campbell,* 419 F.2d 1144 (5th Cir. 1969). When we look, we see that the supplemental charge started off with the caveat that the defendant was presumed innocent and that the government had the burden of proving beyond a reasonable doubt all material elements of the charge against him. Thus, we are unwilling to hold that plain error was demonstrated.

Finally, Ragsdale asserts that the charge amounted to an affirmative instruction to find him guilty. We disagree. A trial judge in a federal court has the right to analyze and comment

on the evidence and to direct and assist the jury whenever he considers it necessary in reaching a just result. His role is not limited to that of moderator or umpire. He is a vital participant in the trial and, within the limitations of his position, he is required to see that justice is done. *United States v. Smith,* F.2d (5th Cir. 1970) [No. 28302, Nov. 6, 1970]. His instructions advising the jury that the testimony as to the actual commission of the crime and the intent with which it was committed were uncontradicted, are literally, factually true. It was his prerogative, if not his duty, to so advise the jury. He nevertheless carefully left to them the final determination of credibility even though all the evidence was uncontradicted, and thus left to them that franchise which inheres in the jury system of pardoning even a culprit whose own testimony established his guilt. His instructions were not error. *United States v. Blue,* F.2d (5th Cir. 1970) [No. 28648, Aug. 24, 1970]; *cf. United States v. Dopf,* F.2d (5th Cir. 1970) [No. 29112, Nov. 30, 1970]. This Circuit is firmly committed to what appears to be the universal rule, that no matter how conclusive the evidence, a court may not direct a verdict of guilt in whole or in part. *United States v. Skinner,* F.2d (5th Cir. 1971) [No. 29113, Jan. 1971]. Any such instruction would amount to plain error which would be noticed, even though not assigned. *Mims v. United States,* 375 F.2d 135 (5th Cir. 1967). But the record in the case at bar presents no such judicial unfairness. The judge did not tell the jury they had to find the defendant guilty. He told them that the evidence was not in conflict and, if they chose to believe it, the elements of the offense had been established. This action was free of error.[4]

II. ALLEGED CUMULATIVE ERROR FROM COURT RULINGS AND PROSECUTORIAL MISCONDUCT

The defendant contends that the entire proceedings were reversibly tainted by the accretion of a number of individual

[4]Here, the court did not mistake any element of the proof which had been adduced such as occured in *Edwards v. United States,* 286 F.2d 681 (5th Cir. 1960) or *United States v. Martin,* F.2d (5th Cir. 1970) [Mp; 28890, November 13, 1970].

mistakes. First, he says that the court, in the hearing of the jury, ruled that the defendants had a reciprocal duty under the Jencks Act [18 U.S.C.A. § 3500 (1969)] to provide the prosecution with copies of any written statements of defense witnesses and that even though the court later corrected this ruling, an inference had been left with the jury that defense counsel had been unfair with the prosecution because the U. S. Attorney said, in the presence of the jury, that all government-witness statements had been turned over to the defense. Second, objection is made to allowing evidence to be adduced related to sexual misconduct with the female prisoner named in Counts 4 and 5, in allowing evidence of the use of narcotics associated with such sexual misconduct to be adduced, and in admitting evidence that the Sheriff had been divorced from his wife (this latter objection is coupled with a suspicion that the jury might have overheard an announcement at a side bar conference that one of the grounds of divorce was violence). Third, an objection was made to allowing a deputy sheriff to testify that he had tried to locate the prisoner Williams – apparently in an effort to explain his absence as a witness. Fourth, objection was made to the prosecutor's spontaneous action in asking the defendant to divulge the number of people he had beaten while in his custody.

All of these errors are said to have aggregated in their impact on the basic fairness of the trial. We disagree for two reasons. The indictment charged five separate offenses, all of a similar nature, to-wit: illegal mistreatment of prisoners. The defendant urged no error in the Court's action in trying all five counts together. The trial obviously could not be compartmentalized. Therefore, evidence which tended to prove the counts involving sexual misconduct was not erroneously admitted. Proof of another crime which aids in or is appropriate in establishing the crime in question would be admissible in any event. *Matthews v. United States,* 407 F.2d 1371 (5th Cir. 1969).

A defendant is entitled to a fair trial, not a perfect one. In the over all context of things we note that the jury acquitted Ragsdale on Counts 2 through 5. This fact reenforces our

conclusion that the record, taken as a whole, demonstrated that the errors he asserts individually and collectively did not cause a miscarriage of justice. *Cf. Steer Tank Lines, Inc. v. United States,* 330 F.2d 719, at headnote 7 (5th Cir. 1963).

The judgment and commitment of William Paul Ragsdale is

AFFIRMED.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1970

No. 30056
Summary Calendar

D. C. Docket No. CR 2511-E

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

WILLIAM PAUL RAGSDALE,
Defendant-Appellant.

Appeal from the United States District Court for the
Middle District of Alabama

Before THORNBERRY, MORGAN and CLARK,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

January 29, 1971

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 30056
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

WILLIAM PAUL RAGSDALE,
Defendant-Appellant

Appeal from the United States District Court for the
Middle District of Alabama

ON PETITION FOR REHEARING AND PETITION
FOR REHEARING EN BANC
(Opinion Jan. 29, 1971, 5 Cir., 1971, F.2d,).

(April 1, 1971)

Before THORNBERRY, MORGAN, and CLARK,
Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure? Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

IN THE
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
April 1, 1971

TO ALL COUNSEL OF RECORD
and WEST PUBLISHING COMPANY:

Re: No. 30056

WILLIAM P. RAGSDALE,
versus
UNITED STATES OF AMERICA
Slip Opinion dated January 29, 1971.

At the direction of the Court, the second sentence on page 12 of the slip opinion in the above cause is modified to read as follows:

> "However he correctly instructed them that if they accepted as true the evidence which established that the Sheriff strapped Williams for the crime of escape and did so as an alternative to instituting a proceeding against his prisoner for that crime according to the forms of the law, then they could infer the intent necessary to constitute a violation of § 242."

In all other respects the opinion shall remain as published on January 29, 1971.

Yours very truly,

EDWARD W. WADSWORTH, Clerk

By s/FRANCES WOLFF
Deputy Clerk

cc: Hon. Virgil Pittman

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1648

WILLIAM PAUL RAGSDALE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A13) is reported at 438 F. 2d 21. The judgment of the district court was rendered without opinion.

JURISDICTION

The judgment of the court of appeals was entered on January 29, 1971. The petition for a writ of certiorari was filed on April 28, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the instructions to the jury deprived petitioner of his right to have the jury determine whether his acts were committed with the specific intent required by 18 U.S.C. 242.

2. Whether the instructions constituted a direction to find petitioner guilty.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The provisions of the Sixth Amendment of the Constitution of the United States and 18 U.S.C. 242 are set forth at pages 2-3 of the petition.

STATEMENT

Petitioner, a former sheriff of Lee County, Alabama, was prosecuted under a five-count indictment charging separate substantive violations of 18 U.S.C. 242. The first three counts alleged brutality toward male inmates. The fourth and fifth counts charged sexual misconduct with a female inmate. A trial by jury resulted in a verdict of guilty as to Count 1 and apparently no verdict as to Counts 2 through 5, inclusive[1]

The uncontradicted evidence relating to Count 1, including the testimony of the petitioner himself, disclosed the following facts: Lawrence Williams was an inmate of the Lee County Jail under the custody of petitioner Ragsdale. On several occasions, Williams unlawfully left the jail. Following each of

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[1] See n. 2, *infra*.

the first few of these escapes, Williams received lectures upon his return to jail. On later recaptures, petitioner disciplined Williams by striking him with a restraining belt. On the particular reapprehension which gave rise to the conviction involved here, petitioner confronted Williams with a choice of procedures: petitioner told Williams he would either swear out a warrant against him for the offense of escape from custody, or would himself administer punishment in the form of six strokes of the restraining belt. Williams agreed to accept the six blows, which petitioner administered.

The court initially charged the jury regarding all six offenses, defining the requisite intent under Section 242 in a manner not here challenged (Pet. App. A4, A5). That charge included a comment on Count 1, which the judge carefully identified as one the jury was "free to disregard," that the jury could find petitioner guilty on the uncontradicted evidence—*i.e.*, that the requisite deprivation of rights was present. One and one half hours after the case was submitted to them the jury asked for additional instructions on the element of intent as it applied to Count 1. In response to this request, the judge addressed the jury at some length (Pet. App. A5-A7). He instructed them, *inter alia*, that petitioner "had no right" to give Williams such a choice and that the petitioner, by putting Williams to that choice instead of proceeding pursuant to a warrant, deprived him of his rights (Pet. App. A6). The trial court then concluded (Pet. App. A6-7):

> Really, about all I have left for your judgment, ladies and gentlemen, in Count 1, is whether you were convinced beyond a reasonable doubt that the evidence as presented to you is what happened. And if you are convinced beyond a reasonable doubt, under the uncontradicted evidence he would be guilty under Count 1.

A few minutes later, the jury returned a verdict of guilty on Count 1, apparently rendering no formal verdict on the other counts.[2]

ARGUMENT

1. The court below correctly held that the trial court's instruction did not deprive the jury of its

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[2] THE COURT: Have you reached a verdict?
THE FOREMAN: We have, your Honor.
THE COURT: Hand it to the Clerk, please.

(Pause.)

THE COURT: We, the jury, find the defendant William Paul Ragsdale guilty as charged in Count 1 of the indictment, this 23rd day of April, 1970. And it is signed by the foreman. Gentlemen, there is one thing about the verdict, the word "Counts" is in the plural. May I change that and make it singular?
MR. BEDDOW: Yes, sir.
THE COURT: It was only one count you wanted to find him guilty of?
THE FOREMAN: Yes, sir.
THE COURT: All right. With everyone's permission I will change that and I will ask each juror is this your verdict.

(Whereupon, the jury was polled by the Court and each and every member thereof answered in the affirmative, that this was his or her own individual verdict.)

THE COURT: I discharge you from any further consideration of this case. * * *. [Tr. 761-762.]

proper function of determining whether Sheriff Ragsdale's acts were committed with the specific intent required by 18 U.S.C. 242.

In order to find that the petitioner acted "willfully" within the meaning of Section 242, the jury had to find that the petitioner acted with specific intent to deprive the prisoner of a constitutional right, "*e.g.*, the right to be tried by a court rather than by ordeal." *Screws* v. *United States*, 325 U.S. 91, 107. That issue, of course, must be submitted to the jury under appropriate instructions. *Id.* at 101. The petitioner argues that the trial judge's instruction as to Count 1 improperly precluded a jury determination on the question whether petitioner acted with the intent required to sustain a conviction under Section 242. This, however, was not the effect of the trial court's instruction.

Petitioner testified that his purpose in administering the beating was to punish Williams for his attempts to escape, and that he inflicted the beating as an alternative to instituting a proceeding against Williams under a warrant. Clearly, this testimony, if true, would establish the specific intent required under Section 242.[3] The effect of the trial court's instruction was merely to inform the jury that if petitioner's statements were true, the legal elements of guilt under Section 242, including the specific intent

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[3] That petitioner's underlying rationale may have been prison discipline is, as the court of appeals held (Pet. App. A 9), irrelevant. Petitioner admittedly knew that Williams was entitled to formal charge and trial and nonetheless chose to administer summary punishment.

required by the statute, were present according to petitioner's own testimony. As the court below said, "a judge can properly instruct as to what acts the statute condemns, which is the most the instructions did here" (Pet. App. A9). The instructions, therefore, did not preclude the jury from determining whether petitioner acted with the requisite intent: "The instructions of the judge left [to the jury] the option to believe or disbelieve what they had heard" (Pet. App. A9).[4]

2. The court below was also correct in holding that the instructions did not constitute an affirmative direction to find petitioner guilty on Count 1. While a trial judge in the federal courts may not direct a verdict of guilty in a criminal case, he is authorized to comment on and analyze for the jury the evidence introduced at trial. *United States* v. *Murdock*, 290 U.S. 389. Accordingly, the judge here acted within his province in pointing out to the jury that if petitioner's testimony was true, a verdict of guilty would be justified. In short, "[t]he judge did not tell the jury they had to find the defendant guilty. He told them that the evidence was not in conflict and, if

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[4] *Screws* v. *United States, supra,* and *Morissette* v. *United States,* 342 U.S. 246, relied on by petitioner, were properly distinguished by the court of appeals. Unlike this case, neither of those cases presented uncontradicted evidence establishing intent. Here, such evidence was present as to one count, and the trial court gave proper general instructions necessary to assist the jury in determining whether the defendants acted with the specific intent prohibited by the statutes involved.

they chose to believe it, the elements of the offense had been established" (Pet. App. A11).

The decision below arises out of unique and uncontradicted facts. It is not in conflict with this Court's previous rulings, nor does it raise any novel questions of law. There is no reason for further review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

EPWIN N. GRISWOLD,
Solicitor General.

DAVID L. NORMAN,
Acting Assistant Attorney General.

ROBERT S. GREENSPAN,
Attorney.

MAY 1971.

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